

REMARKS

Claims 31, 33-42, 44-49, 51-53 and 55-59 were examined and rejected, while claims 32 and 43 were withdrawn from consideration in view of a species restriction.

By this amendment, claims 31-34, 36-55, 59 are amended, claim 35 is cancelled, and claim 60 is added.

Claim 31, drawn to the coated chewing gum, is amended to limit it to elected species (B), and to recite that the natural vegetable flavoring agent comprises in tact cells of a dried fruit or herb.

Turning to method claim 55, since preparation of the core of chewing gum and the coating suspension is conventional,¹ old steps (1) and (2) have been merged into a single "providing" step (1), which also recites the providing of the natural vegetable flavoring agent. Also, old step (3) is now step (2). More importantly, method claim 55 is amended to require that the natural vegetable flavoring agent be provided in form of a dry powder (which, per old claim 35, is derived by powdering a dried fruit or a dried herb) and that, when it is applied in step (3) [old step (4)] to coated cores of chewing gum, the agent is and remains in the form of a powder throughout the applying step.

Basis for this amendment appears at P6, L26-30 (referring to drying), P7, L8-21 (referring to use of a powder), P10, L18-22 ("dry" and "powder"), and P16, L27-30 (sprinkling of powder over cores of chewing gum). See also original claims 7, 11-13 and 25 (step (4)).

With two exceptions, claims 32-34 and 36-54 are amended solely to convert them from product claims dependent, directly or indirectly, on claim 31, to method claims dependent, directly or indirectly, on claim 55. The first exception is claim 40, wherein we have also excised the limitation ", and which seeds are substantially intact".

¹ A point noted in original claim 25.

The other is claim 51, which has been made dependent on claim 50 rather than claim 44, in response to a 112/2 rejection. Note that 50-51 refer to encapsulated "active substances" in general, not just encapsulated flavoring agents.²

Method claim 59 has been amended to conform it to the use of "flavoring agent", instead of "flavor", in base claim 55.

Indefiniteness

Claim 51 was rejected because of lack of antecedent basis for "encapsulated active substance" in base claim 44. The Examiner suggested shifting the dependency to 49, but this doesn't solve the problem. We have instead made 51 dependent on 50, which recites that "the active substance is in an encapsulated form".

Anticipation

The Examiner points out that Cherukuri teaches the addition of spray-dried flavors, and considers such flavors as being in powdered form.

In spray-drying, a liquid feedstock is atomized into a spray of liquid droplets. These come into contact with hot air in a drying chamber, and the droplets are thereby converted into dry particles, ultimately forming a powder.

Amended method claim 55 avoids anticipation by Cherukuri's method because (1) it requires that the natural vegetable flavoring agent be provided as a powder, and that it remain a powder throughout the drying step. New claim 60 further requires that the agent be embedded, in the coating, in solid form.

With regard to the sole product claim (31), this claim now requires that the natural vegetable flavoring agent be a powder of a dried fruit or herb which comprises intact cells of said

² According to P5, L31-32, "active substances" include acids, salts, high potency sweeteners and functional substances, as well as flavors. The functional substances include vitamins, enzymes and pharmaceuticals, see PP9-10.

fruit or herb, per P6, L28-29. Nothing in Cherukuri's description of spray-drying is indicative of an intent to preserve intact cells of the fruit or herb which is the source of the flavor. A claimed feature can be deemed inherently anticipated only if it flows inescapably from the explicit features of the prior art product. This legal requirement is not met by Cherukuri.

Obviousness

The Examiner has not made any obviousness rejection and cannot make such a rejection without withdrawing finality. (Any claim previously rejected for anticipation could have been rejected previously for obviousness, because anticipation is the epitome of obviousness).

Nonetheless, in the interest of compact prosecution, we will comment briefly on the issue of obviousness.

The present invention solves the problem of loss of activity during storage and low effect of natural vegetable flavoring agents in prior art coated chewing gum.

The present invention as defined by the amended claims, solves this problem by applying the natural vegetable flavoring agents in the form of a powder to the coating of the chewing gum.

The main teaching of Cherukuri et al. is that sensitive substances like flavors are preferably sealed in the core of the chewing gum by means of a soft and flexible sucrose-containing coating. Thus, Cherukuri et al. would encourage a skilled person, seeking to solve the above problems, to place the natural vegetable flavoring agent **inside** the core of the chewing gum and to surround the core of the chewing gum with the soft and flexible coating due to the improved barrier effect of the flexible coating.

Cherukuri et al. does neither teach nor suggest the use of natural vegetable flavoring neither does it teach nor suggest the surprising finding that the above described problems are solved using the present invention.

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Accordingly, the method of preparing a coated chewing gum of claim 55, by applying the natural vegetable flavoring agent in the form of powder to the coating, represents a non-obvious solution to the technical problem it was set out to solve.

Respectfully submitted,

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